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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,779	02/28/2002	Tammy C. Luttrell	TAML-100A	8976
33549 7590 06/04/2007 SANTANGELO LAW OFFICES, P.C. 125 SOUTH HOWES, THIRD FLOOR FORT COLLINS, CO 80521			EXAMINER GLASS, RUSSELL S	
			ART UNIT 3626	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/086,779	Applicant(s) LUTTRELL, TAMMY C.	
	Examiner Russell S. Glass	Art Unit 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the claim appears to be incorrectly written and fails to clearly convey the method steps required to practice the invention. It is suggested that the claim instead read "...dynamically modifying said composite physical therapy treatment goal... ." in order to be in compliance with 35 U.S.C. 112, second paragraph.

Allowable Subject Matter

2. Claim 24 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
3. The following proposed claims 25 and 26 have been drafted by the examiner and are considered to distinguish patentably over the art of record in this application:

(25) The system of claim 12 wherein said composite physical therapy treatment goal is dynamically modified to create at least one edited

Art Unit: 3626

treatment goal identified for the patient based upon a development evaluation of said patient during at least one treatment modality.

(26) The program code of claim 19 comprising a fourth program code for dynamically modifying said composite physical therapy treatment goal to create at least one edited treatment goal identified for the patient based upon a development evaluation of said patient during at least one treatment modality.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-23, 25, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bianco et al., (U.S. Pub. 2002/0082865).

5. As per claim 1, Bianco suggests a process for tracking skilled-service rendered to a patient at a physical therapy treatment location by a physical therapy provider trained in a physical therapy discipline, comprising the steps of:

treating said patient based on at least one physical therapy treatment goal at said physical therapy treatment location by said provider, (Bianco, Abstract, Fig.1, ¶ 11-24),

generating, at least one record of incremental provider observed progress development, said record of incremental provider observed progress development comprising an indication of incremental patient advances made toward a composite

physical therapy treatment goal as compared to a preferred result, (Bianco, Abstract, Fig.1, ¶ 11-24);

receiving an input comprising at least one of said record of incremental provider observed progress development so generated, for storage as treatment record data at a host location, (Bianco, Abstract, Fig.1, ¶ 11-24);

using said treatment record data and a host processor, automatically generating a patient report, (Bianco, Abstract, Fig.1, ¶ 11-24) (pre-event and post event files are considered to be equivalent to a patient report since it performs an identical function in substantially the same way and produces substantially the same results); and

submitting said patient report to an entity selected from the group consisting of a health care facility, a health care provider, an insurer, the patient, an entity authorized to receive records of the patient, and a record-keeping entity for the provider, (Bianco, Abstract, Fig.1, ¶ 11-24) (disclosing submitting report to patient).

Bianco fails to expressly disclose incremental provider observed progress development. However, such progress development would be obvious to one of ordinary skill in the art at the time of the invention because it consists of counting, valuating and/or otherwise recording the number of appropriate increments completed versus those required for completion by a patient during a physical therapy session, (Bianco, fig. 17B)(disclosing a requirement of 10-20 repetitions where it would be obvious to count the repetitions and create a fraction, i.e. 15/20).

6. As per claim 2, Bianco suggests a process wherein: said at least one record of

Art Unit: 3626

incremental provider observed progress development further comprises a description of said composite physical therapy goal, a date of a treatment session, and the provider's identity; said step of receiving an input further comprises receiving said description and said provider's identity into respective data fields; and said step of submitting further comprises submitting said report for a payment from said entity for the skilled-service rendered, (Bianco, Abstract, Fig.1, ¶¶ 11-24, 79, 86, 89, 90, 91, 93, 99, 102, 103, 111) (tasks to be completed are considered equivalent to a goal since it performs an identical function in substantially the same way and produces substantially the same results).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

7. As per claim 3, Bianco suggests a process wherein: said at least one record of incremental provider observed progress development further comprises a description of said composite physical therapy treatment goal and a date of a treatment session; said step of generating further comprises entering said incremental provider observed progress development made and said date into respective input fields of a treatment record display; said step of submitting further comprises transmitting said report as electronic data over a data transfer pathway to said entity for a payment for the skilled-service rendered, (Bianco, Abstract, Fig.1, ¶¶ 11-24, 79, 86, 89, 90, 91, 93, 99, 102, 103, 111).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

8. As per claim 4, Bianco suggests a process wherein each said physical therapy treatment goal was identified based upon an evaluation of the patient's condition, and said step of generating further comprises entering said at least one record of incremental provider observed progress development onto a hardcopy composite record; and further comprising, thereafter, the step of entering said incremental provider observed progress development made and a date of a treatment session into respective input fields of a treatment record display, (Bianco, Abstract, Fig.1, ¶¶ 11-24, 79, 86, 89, 90, 93, 91, 100, 102, 103, 104, 111, 117).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

9. As per claim 5, Bianco suggests a process wherein each said physical therapy treatment goal was identified based upon an evaluation of the patient's condition; and further comprising, prior to the step of automatically generating said patient report, the step of generating a plan comprising a prescription for follow-up with the patient, (Bianco, Abstract, Fig.1, ¶¶ 11-24, 79, 86, 89, 90, 93, 91, 100, 102, 103, 104, 111).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

10. As per claim 6, Bianco suggests a process further comprising the steps of:

generating an evaluation record comprising a description of said evaluation, a date of said evaluation, and an evaluator's identity, (Bianco, Abstract, Fig.1, ¶¶ 11-24, 79, 86, 89, 90, 93, 91, 100, 102, 103, 104, **111**); and

receiving an input comprising said evaluation record for storage as evaluation record data at said host location, (Bianco, Abstract, Fig.1, ¶¶ 11-24, 79, **83-86**, 89, 90, **93**, 91, 100, 102, 103, 104, 111).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

11. As per claim 7, Bianco suggests a process further comprising, prior to the step of generating said at least one record of incremental provider observed progress development, the steps of retrieving said evaluation record data; and wherein said step of submitting further comprises submitting said report for a payment from said entity for the skilled-service rendered, (Bianco, Abstract, Fig.1, ¶¶ 11-24, 79, **86**, 89, 90, **93**, 91, 100, 102, 103, 104, 111).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

12. As per claim 8, Bianco suggests a process wherein said step of generating a plan further comprises entering said plan into an input field of a plan record display for storage as plan record data at said host location; and further comprising the steps of:
retrieving said plan record data; and

after said steps of retrieving said evaluation record data and said plan record data, the step of printing a hardcopy of said plan and said evaluation for use at said treatment location, (Bianco, Abstract, Fig.1, ¶¶ 11-24, 79, 86, 89, 90, 93, 91, 100, 102, 103, 104, 111, **117**).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

13. As per claim 9, Bianco suggests a process wherein:

said step of generating further comprises the steps of generating a plurality of said records of incremental provider observed progress development, each said record associated with one of a plurality of physical therapy treatment goals identified for the patient, and creating a composite record comprising each said record of incremental provider observed progress development along with a record of skilled intervention action used; and

said step of submitting further comprises transmitting said report as electronic data over a data transfer pathway to said entity for a payment, (Bianco, Abstract, Fig.1, ¶¶ 11-24, 79, 86, 89, 90, **93, 91**, 100, 102, 103, 104, 111).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

14. As per claim 10, Bianco suggests a process wherein said data transfer pathway comprises a network; and further comprising, prior to the step of receiving an input, the

Art Unit: 3626

step of entering each of said plurality of said records of incremental provider observed progress development made and a date of said treatment session into respective input fields of a treatment record display, (Bianco, Abstract, Fig.1, ¶¶ 11-24, 79, 86, **89-91**, 93, **94**, 99, 102, 103, 111).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

15. As per claim 11, Bianco suggests a process wherein each said physical therapy treatment goal, having been identified from a list, is further modified based upon an evaluation of the patient's condition, (Bianco, Abstract, Fig.1, ¶¶ 11-24, 79, 86, 89, 90, 91, 93, **94**, 99, 102, 103, 111).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

16. As per claim 12, Bianco suggests a system for tracking skilled-service rendered to a patient at a physical therapy treatment location by a physical therapy provider trained in a physical therapy discipline, comprising:

a composite record, generated at the physical therapy treatment location, comprising at least one record of incremental provider observed progress development, said record of incremental provider observed progress development comprising an indication of incremental patient advances made toward a composite physical therapy treatment goal as compared to a preferred result, (Bianco, Fig. 2A, ¶¶ 87-91);

a storage medium at a host location for storing treatment record data comprising at least one of said record of incremental provider observed progress development so generated, (Bianco, Fig. 1, ¶¶ 83-86); and

a host processor for automatically generating, using said treatment record data, a patient report for an entity selected from the group consisting of a health care facility, a health care provider, an insurer, the patient, an entity authorized to receive records of the patient, and a record-keeping entity for the provider, (Bianco, Abstract, Fig.1, ¶ 11-24, **136-138**) (disclosing generating a report for patient with a processor).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

17. As per claim 13, Bianco suggests a system wherein said at least one record of incremental provider observed progress development further comprises a description of said goal having been identified based upon an evaluation of the patient's condition and a date of said treatment session; and further comprising an interface for entering said incremental provider observed progress development made and said date into respective input fields of a treatment record display, (Bianco, Abstract, Fig.1, ¶¶ 11-24, **78-80, 87-91, 93, 94, 102, 103, 111**).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

18. As per claim 14, Bianco suggests a system further comprising a user interface for

entering, at said host location from a hardcopy of said composite record generated at the physical therapy treatment location, said at least one record of incremental provider observed progress development made into an input field of a treatment record display, (Bianco, Abstract, Fig.1, ¶¶ 11-24, **78-80**, **87- 91**, 93, **94**, 102, 103, 111, 116) (disclosing a treating physician using an interface to modify the treatment record).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

19. As per claim 15, Bianco suggests a system wherein said composite record further comprises a plan comprising a prescription for follow-up with the patient; and further comprising an interface for entering said plan into an input field of a plan record display for storage at said host location as plan record data, (Bianco, Abstract, Fig.1, ¶¶ 11-24, **78-80**, 83-86, **87- 91**, 93, **94**, 102, 103, 111, 116) (disclosing a treating physician using an interface to modify the post-event set of electronically displayable files).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

20. As per claim 16, Bianco suggests a system wherein: each said composite physical therapy treatment goal was identified based upon an evaluation of the patient's condition; said interface further allows for entering a description of said evaluation into an input field of an evaluation record display for storage at said host location as evaluation record data; and said patient report comprises information from said at least

Art Unit: 3626

one record of incremental provider observed progress development, said plan record data, and said evaluation record data, (Bianco, Abstract, Fig.1, ¶¶ 11-24, 78-80, 83-86, 87- 91, 93, 94, 102, 103, 111, 116) (disclosing a treating physician using an interface to modify the post-event set of electronically displayable files) (tasks to be completed are considered equivalent to a goal since it performs an identical function in substantially the same way and produces substantially the same results).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

21. As per claim 17, Bianco suggests a system wherein said composite record further comprises a plurality of said records of incremental provider observed progress development, each said record associated with one of a plurality of treatment goals identified based upon an evaluation of the patient's condition; and further comprising a data transfer pathway in communication with said host processor for transmitting said report as electronic data to said entity, (Bianco, Abstract, Fig.1, ¶¶ 11-24, 79, 86, 89, 90, 93, 91, 100, 102, 103, 104, 111).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

22. As per claim 18, Bianco suggests a system further comprising a user interface for entering said composite record at the treatment location, said user interface in communication with a second data transfer pathway for transmitting said composite

Art Unit: 3626

record entered to said host location storage medium, (Bianco, Abstract, Fig.1, ¶¶ 11-24, **78-80, 83-86**, 87- 91, 93, 94, 102, 103, 111).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

23. As per claim 19, Bianco suggests a computer executable program code on a computer readable storage medium for tracking skilled-service rendered to a patient at a physical therapy treatment location by a physical therapy provider trained in a physical therapy discipline, the program code comprising:

a first program sub-code for receiving an input of data comprising at least one record of incremental provider observed progress development, said record of incremental provider observed progress development comprising an indication of incremental patient advances made toward a composite physical therapy treatment goal as compared to a preferred result, (Bianco, Abstract, Fig.1, ¶¶ 11-24, **78- 91, 93, 94, 96, 102**, 103, 111, 116);

a second program sub-code for storing at least one of said record of incremental provider observed progress development so received, as treatment record data at a host location, (Bianco, Abstract, Fig.1, ¶¶ 11-24, **78- 91, 93, 94, 96, 102**, 103, 111, 116); and

a third program sub-code for generating a patient report using said treatment record data and a host processor, said patient report comprising information from said at least one record of progress for submitting to an entity selected from the group

consisting of a health care facility, a health care provider, an insurer, the patient, an entity authorized to receive records of the patient, and a record-keeping entity for the provider, (Bianco, Abstract, Fig.1, ¶¶ 11-24, 78- 91, 93, 94, 96, 102, 103, 111, 116) (disclosing submitting report to patient).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

24. As per claim 20, Bianco suggests a program code wherein said input comprising said at least one record of incremental provider observed progress development is first entered through a user interface at said treatment location and temporarily stored as local treatment record data, and said first program sub-code further comprises instructions for accepting said local treatment record data at said host location; and further comprising a fourth program sub-code for transmitting said patient report over a data transfer pathway for payment from said entity (Bianco, Abstract, Fig.1, ¶¶ 11-24, 78- 91, 93, 94, 96, 99, 102, 103, 111, 116).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

25. As per claim 21, Bianco suggests a process further comprising the step of valuating a quantifiable record of incremental provider observed progress development made toward said composite physical therapy treatment goal as compared to a preferred result, (Bianco, Abstract, Fig.1, ¶ 11-24).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

26. As per claim 22, Bianco suggests a system wherein said composite record comprises a valuation of a quantifiable record of incremental provider observed progress development, (Bianco, Abstract, Fig.1, ¶ 11-24).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

27. As per claim 23, Bianco suggests a program code wherein said input of data comprises a valuation of a quantifiable record of incremental provider observed progress development, (Bianco, Abstract, Fig.1, ¶ 11-24).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

28. As per claim 25, Bianco suggests a system wherein said composite record comprises a dynamically edited treatment goal based on a development evaluation of said patient during at least one treatment modality. The claim limitation "wherein said composite record comprises a dynamically edited treatment goal based on a development evaluation of said patient during at least one treatment modality" is not given patentable weight because it is considered to be non-functional descriptive material. No patentable weight is given to printed matter absent a new and unobvious

functional relationship between the printed matter and the substrate. See *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

29. As per claim 26, Bianco suggests a program wherein said input of data comprises a dynamically edited treatment goal based on a development evaluation of said patient during at least one treatment modality. The claim limitation "wherein said input of data comprises a dynamically edited treatment goal based on a development evaluation of said patient during at least one treatment modality" is not given patentable weight because it is considered to be non-functional descriptive material. No patentable weight is given to printed matter absent a new and unobvious functional relationship between the printed matter and the substrate. See *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004).

The motivation to modify Bianco in the claimed manner is as provided in the rejection of claim 1 and incorporated herein by reference.

Response to Arguments

Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell S. Glass whose telephone number is 571-272-3132. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3626

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RSG
5/21/2007



Robert Morgan
Robert Morgan
Patent Examiner
Art Unit 3626